IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.565 OF 2000

Panjabrao Namdeo Bhagat ...Appellant

V/s.

The State of Maharashtra ...Respondent

Ms.Sharmila S. Kaushik for the Appellant.

Smt.V.R. Bhosale, PP for the Respondent State.

CORAM : J.N. PATEL &
A.A. SAYED, JJ.

DATE : 19TH APRIL, 2007.

ORAL JUDGMENT: (Per J.N. Patel, J.)

1. The Appellant-original accused has challenged the judgment and order dated 04.05.2000 passed by the learned Additional Sessions Judge in Sessions Case No. 563/1998, wherein he was tried on a charge of having committed murder of his wife and was found guilty for having committed offence under Section 302 of the I.P.C. and sentenced him to suffer R.I. for life and to pay a fine of Rs.10,000/- and in default to suffer R.I. for one year.

2. It is the prosecution’s case that the

Appellant-accused was married to Sunanda, the deceased, in the year 1998 and they were residing together in Wadala. The Appellant-accused used to suspect the character of his wife and was in the habit of consuming liquor and used to frequently take up quarrel with his wife and assault her. There has been two N.C. complaints lodged earlier by the deceased Sunanda against her husband in Wadala Police Station.

3. According to the prosecution on 19.02.1998 at about 8:00 p.m. in Room No.52, Ganesh Nagar Zopadpatti, Saultpan Road, Wadala (E), where the Appellant-accused is residing with his wife Sunanda, the Appellant-accused poured kerosene on his wife and set her ablaze. On catching fire Sunanda shouted for help which was heard by the neighbours and out of them Rupesh Devji Kadam (PW-1) and Raghunath Laxman Joshi (PW-2) came to her rescue. Within a short period of time brother of the deceased by name Prakash Ganpat Patil who resides in the neighbourhood also rushed to the house of her sister and found that she was burnt and the surrounding was smelling of kerosene. The Appellant-accused and Prakash Ganpat Patil then took the victim to Sion Hospital in a taxi. At Sion Hospital the police constable Shri.Anil Ramchandra Gaikwad who was on duty made an entry in EPR Register meant for the said purpose (Exhibit-16) and informed Wadala Police Station about the incident. The victim

was admitted in Sion Hospital.

4. PSI Rajesh Raghunath Kasare who was at the relevant time on duty at Wadala Police Station contacted SEM Vivek Shivram Shinde for the purpose of recording dying declaration and therefore visited Sion Hospital alongwith the SEM after making necessary entry in the Station Diary. PSI Kasare then recorded the statement of the victim Sunanda which was treated as First Information Report on the basis of which the police registered an offence under Section 307 of the I.P.C. against Appellant-accused.

5. PSI Kasare then carried out further investigations in the case i.e. recording of statement of witnesses, carrying out and conducting spot Panchanama (Exhibit-13). He arrested the accused and seized clothes of the deceased as well as the accused which was sent to the Chemical Analyser for his report. The Victim Sunanda succumb to her injury on 27.02.1998 at Sion Hospital. Therefore, her body was sent for post-mortem examination which came to the conducted by Dr.Mukesh Shamrao Ghuge on 27.02.1998. After conducting the post-mortem examination, the Doctor opined that the cause of death was due to shock following burns. On the basis of this, the police converted the offence under Section 302 of I.P.C. and, thereafter, on completion of the investigation a

charge-sheet came to be filed against the appellant-accused whose case was committed for trial and that is how the Appellant-accused was convicted and tried for the charge of having committed murder of his wife.

6. In reply to the charge, the Appellant-accused pleaded not guilty and claimed to be tried. It appears that the Appellant-accused took plea in his defence that when he came to his house he found his wife in burned condition and thereafter he removed her to the hospital.

7. The learned counsel appearing for the Appellant-accused submitted that the prosecution case is based on the dying declaration of the victim which cannot be considered to be reliable. If it is read with the other evidence on record it is submitted that there is no evidence brought on record by the prosecution to show that the Appellant-accused has poured kerosene on his wife and set her ablaze. On the other hand, the witnesses examined by the prosecution, who are admittedly neighbours of the accused, deposed that they heard the victim shouting for her help "vachva.. vachva.." They noticed that the Appellant-accused was trying to open the door of the hut and he was assisted by the witnesses and they found that the victim has suffered burn injuries and then she

was removed to the hospital in a taxi by the accused and his brother-in-law.

8. It is submitted that the victim is supposed to have told her brother Prakash Patil (PW-4) while she was carried to the hospital that the accused has poured kerosene on her person and set her ablaze which does not inspire confidence as Prakash Patil (PW-4) being brother of the deceased has deposed against the accused in order to implicate him. Further it is submitted that Prakash Patil (PW-4) before coming to the scene of occurence claims to have learnt from one of his brother that her sister has caught fire and that in his cross-examination he has admitted that he had no talk with the accused over the incident when his sister told him that it is the accused who had burned her. This creates doubt about the veracity of evidence of Prakash Patil on this issue.

9. The learned counsel appearing for the Appellant-accused further submitted that the possibility of the victim implicating the Appellant-accused cannot be ruled out and in all probability it is the case of suicide rather than homicidal death and therefore the prosecution has failed to prove its case against the accused beyond the shadow of doubt. It is submitted that if the evidence

led by the prosecution is considered as a whole, two views are possible i.e. either the victim has committed suicide considering the evidence of PW-1 & PW-2 and if her dying declaration is to be believed then it is the case of homicide. It is, therefore, submitted that the view which is in favour of the accused deserves to be accepted.

10. The learned Public Prosecutor submitted that the prosecution has established its case beyond the shadow of doubt. The evidence of PSI Kasare (PW-1) clearly shows that the Appellant-accused suspected his wife and was in the habit of consuming liquor and assaulting her. The prosecution has brought on record two previous complaints made by the wife at Wadala Police Station. It is submitted that at the very first instance when police constable Mr.Anil Gaikwad enquired from the victim, he was told that her husband has poured kerosene and set her on fire which has been proved by placing an entry in the EPR Register on record and by examining PW-8 P.C. Anil Ramchandra Gaikwad. Further while PSI Kasare recorded the statement of the witness she clearly implicates the Appellant-accused as the person who poured kerosene on her and set her ablaze. These facts stand corroborated by the dying declaration recorded by SEM Mr.Vivek Shivram Shinde (PW-6) wherein the victim has specifically stated about complicity of the

Appellant-accused as having poured kerosene on her and set her on fire, after her brother i.e. Prakash Patil left their house. It is, therefore, submitted that these witnesses who are independent in nature would not depose falsely against the Appellant-accused. The dying declaration is duly proved by examining the SEM Mr.Vivek Shinde. It is further submitted that the Spot Panchanama (Exhibit-13) also corroborates the prosecution case as the kerosene can was seized from the spot. Further the clothes of the deceased as well clothes of the accused were sent for chemical analysis and the Chemical Analyst's report at Exhibit-23 records that kerosene was found on the clothes of the deceased as well as the accused for which the Appellant-accused offered no explanation and, therefore, this should also be considered as an additional link in the chain of circumstances. Therefore, the Appeal deserves to be dismissed.

11. Insofar as the fact that the victim Sunanda died due to burn injuries, the prosecution has examined Dr. Mukesh Shamrao Ghuge (PW-7) who has conducted post-mortem on the dead body of Sunanda and he has found that the victim has suffered 65% superficial deep burns and in his opinion the victim died due to shock following burns. The key issue which requires to be decided is as to whether the Appellant-accused is the author of the burn injuries caused to the victim which

has resulted into her death. The prosecution has examined Rupesh Devji Kadam (PW-1) and Raghunath Laxman Joshi (PW-2), who were the neighbours and who responded to the shouts of the deceased at the time she was in flames and burning. These two witnesses in their evidence have deposed to the fact that they are the neighbours of the Appellant-accused and on the day of the incident when they returned from their work, they heard shouts from the hut of the deceased "vachwa.. vachwa.." So they rushed to the place. Raghunath Laxman Joshi (PW-2) categorically deposes that when he heard the shouts "vachwa.. vachwa..", he went out and saw accused standing outside his house and trying to open the door and they helped him in opening the door. They found his wife on fire and they tried to extinguish the fire by pouring water. She was taken to the hospital by the accused and the brother of the deceased. Rupesh Devji Kadam (PW-1) does not speak about the act of the accused in trying to open the door. It appears from his evidence that he reached the scene of occurence after Raghunath Laxman Joshi (PW-2) as is evident from his deposition before the Court that when he heard cries of a lady and went there he saw that the door was broken open by some one and the fire was extinguished by pouring water on the body of the deceased who was on fire. She was wife of Bhagat and she was brought out from inside the house after fire was extinguished and thereafter her brother had come

which fact corroborates the evidence of Raghunath Laxman Joshi as well as Prakash Patil (PW-4). The facts deposed by Rupesh Devji Kadam (PW-1) corroborates the evidence of Raghunath Laxman Joshi (PW-2) and Prakash Patil (PW-4) brother of the deceased. If it was the prosecution's case that it is the Appellant-accused who poured kerosene on the person of his wife and set her ablaze, we fail to understand why the prosecution did not declare Raghunath Laxman Joshi (PW-2) as hostile and if evidence of Raghunath Laxman Joshi is considered as a whole along with the evidence of other witnesses, who reached the spot, namely PW-1 Rupesh Devji Kadam, PW-4 Prakash Patil, it goes to show that the Appellant-accused was outside his house when the victim caught fire. On the other hand, Raghunath Laxman Joshi (PW-2) saw him trying to open the door and he alongwith others helped him in doing so. From this, an inference can be drawn that the door was locked from inside and if that is so, in all probability, the victim attempted to commit suicide rather than the Appellant-accused having poured kerosene on her person and set her ablaze. In juxtaposition if the dying declaration of the victim is taken into consideration as tried to be proved by examining Mr.Vivek Shinde SEM PW-6, it cannot be considered enough to invite the conviction of the Appellant-accused for having committed murder of his wife. As the same is recorded at a later stage after

the relative of the victim came to know about the incident, the possibility of the wife (having lost hope of survival) implicating her husband cannot be ruled out. Therefore, we find that dying declaration of the victim as recorded by the victim does not inspire confidence and the benefit of the same should be given to the Appellant-accused.

12. In spite of corroborative piece of evidence if the dying declaration cannot be accepted, it does not lead the prosecution anywhere to prove the guilt of the appellant. One has to keep in mind that Prakash Ganpat Patil (PW-4) and Shantabai Shankar Kambli (PW-5) are interested witnesses and it will be unsafe to rely on their evidence particularly that of PW-4 who claims that his sister told him while she was being carried to the hospital that the Appellant-accused poured kerosene on her and set her ablaze which appears to be unnatural for the reason that he fails to confront the accused who was accompanying them in the taxi. On the other hand, the conduct of the Appellant-accused in trying to open the door and rescue his wife and further his attempt to extinguish the fire which is also stated by the victim in her dying declaration, is clear. It is the accused who has put blanket on her and removed her in the hospital alongwith her brother and thereafter the conduct of the accused having stayed back in the

hospital rather speaks of his innocence than guilt.

13. The learned Trial Court has placed too much reliance on the dying declaration for arriving at the conclusion that the Appellant-accused can be held guilty rather than the substantive evidence on record which rather points to the innocence of the accused and therefore in our opinion the Appellant-accused deserves to be acquitted by giving him benefit of doubt.

14. We, therefore, quash and set aside the conviction and sentence and acquit the accused of the charge of having committed offence under Section 302 of the I.P.C. The Appellant-accused be forthwith set at liberty if not required in any other case. The Appeal is allowed accordingly.

[J.N. PATEL, J.]

[A.A. SAYED, J.]